



4191-02U

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2017-0046]

Rescission of Social Security Acquiescence Ruling 86-3(5)

AGENCY: Social Security Administration.

ACTION: Notice of Rescission of Social Security Acquiescence Ruling 86-3(5)- Martinez v. Heckler, 735 F.2d 795 (5th Cir. 1984) --Disability Program -- Individuals Who Are Illiterate and Unable To Communicate in English -- Titles II and XVI of the Social Security Act.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), 404.985(e)(4) and 416.1485(e)(4), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling (AR) 86-3(5).

DATES: We will apply this rescission notice on April 27, 2020.

FOR FURTHER INFORMATION CONTACT: Dan O'Brien, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 597-1632. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213, or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION: We use ARs in accordance with 20 CFR 402.35(b)(2), 404.985(a), (b), and 416.1485(a), (b) to explain how we apply a holding in a United States Court of Appeals decision that we determine conflicts with our interpretation of a provision of the Social Security Act (Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review. As provided by 20 CFR

404.985(e)(4) and 416.1485(e)(4), we may rescind an AR as obsolete and apply our interpretation of the Act or regulations if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of a circuit court holding that we determined conflicts with our interpretation of the Social Security Act or regulations.

In 1984, in *Martinez v. Heckler*, the Court of Appeals for the Fifth Circuit considered the issue of whether the vocational rules¹ applicable to those individuals who were illiterate *or* unable to communicate in English were applicable to individuals who were illiterate *and* unable to communicate in English.

The court concluded that because Mr. Martinez was both illiterate *and* unable to communicate in English, he did not fall within the criteria set forth in Rule 201.23 (sedentary, younger individual aged 18-44, illiterate or unable to communicate in English, unskilled or no work). The implication of the decision was that the rule did not apply to individuals who were both illiterate *and* unable to communicate in English.

In response to the decision, we issued AR 86-3(5).² In the ruling, we explained that we must make a finding on illiteracy *and* inability to communicate in English when both are alleged or appear to be in question for an individual residing in Texas, Mississippi, or Louisiana and seeking disability benefits or continuation of disability benefits under Title II or Title XVI. We clarified that if an individual aged 18 to 44 is limited to sedentary work with unskilled or no work history is found to be both illiterate *and* unable to communicate in English, we cannot apply the Rule 201.23 under the holding of the *Martinez* decision. We instructed adjudicators to use the vocational rules only as guidance for decisionmaking in such cases. We also issued the

¹ See 20 CFR Part 404 Subpart P Appendix 2.

² AR 86-3(5) applied only to cases in which the individual resided in Texas, Mississippi or Louisiana at the time of the determination or decision at any level of administrative review.

same guidance for Rule 202.16 (light, younger individual aged 18-44, illiterate or unable to communicate in English, unskilled or no work) in the ruling.

We are revising our rules to remove the education category inability to communicate in English on [INSERT DATE OF PUBLICATION]. The revision will become effective on April 27, 2020. Because we are eliminating the education category “inability to communicate in English,” the instructions contained in AR 86-3(5) will be obsolete as of that date. Consequently, we are rescinding AR 86-3(5) effective on April 27, 2020

(Catalog of Federal Domestic Assistance, Programs Nos. 96.001, Social Security--Disability Insurance; 96.002, Social Security-- Retirement Insurance; 96.004, Social Security--Survivors Insurance; 96.006--Supplemental Security Income.)

Dated: January 30, 2020.

Andrew Saul,
Commissioner of Social Security.

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